Application No.: 10/827,523   Docket No.: 1509-501

REMARKS

By this Amendment, claims 1, 13, 15, 25-28, and 30-33 are amended, and claims 29 and 34-35 are canceled. Accordingly, claims 1-28 and 30-33 are pending in this application. No new matter is presented in this Amendment. Reconsideration of the application and allowance of the pending claims are respectfully requested based upon the remarks below.

Claim Rejections under 35 U.S.C. §101

Claims 25-35 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, the Office Action asserts that although independent claim 5 recites a "template," claim 25 fails to claim the template recorded on an appropriate computer readable medium so as to be structurally and functionally interrelated to the medium and permit the function of the descriptive material to be realized. Applicants respectfully submit that this rejected is traversed by the amendments to claims 25-28 and 30-33, and the cancellation of claims 29 and 34-35.

Specifically, amended claims 25-28 and 30-33 are directed to "a computer program product for translating binary code instructions from a source format to a target format for processing by a target processor, comprising a computer-readable medium, further comprising. . . ." Because claims 25-28 and 30-33 are amended to claim the template recorded on an appropriate computer medium, the claimed invention is directed to statutory subject matter. Accordingly, withdrawal of the rejection under 35 U.S.C. §101 is respectfully requested.

Claim Rejections under 35 U.S.C. §102

Claims 1-5, 7-8, 10, 13-17, 19-20, 22, 25-30, and 33-34 stand rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 6,075,937 to Scalzi et al. ("Scalzi"). A rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently. Applicants respectfully submit that this rejection is traversed by the following argument.

As amended, independent claim 1 recites, *inter alia*, a method of translating binary code instructions from a source format to a target format for processing by a target processor,

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comprising a step of:

> "performing dependency analysis using a Directed-Acyclic-Graph," and

> "generating dependency analysis code using input and output resources named
> in the template ...."

These features are fully supported in the specification on page 14. Nowhere does Scalzi disclose, teach, or suggest these features.

At column 6, lines 8-56, Scalzi only appears to disclose an asynchronous emulation processor (AEP) that stores special incompatible-architectural modes, and special incompatible instruction characteristics for controlling the selection of among plural templates available for the same incompatible instruction operation code. Nowhere does Scalzi disclose using a Directed-Acyclic-Graph or generating dependency analysis code, as recited in claim 1. Accordingly, claim 1 is allowable over Scalzi.

Independent claims 12, 25, and 33 are amended to recite apparatus and computer program product claims, and are based upon the allowable subject matter of claim 1. Accordingly, claims 12, 25, and 33 are similarly allowable over Scalzi.

Claims 2-5, 7-8, 10, 12-17, 19-20, 22, 26-28, and 30 depend variously from independent claims 1, 12, and 25, and are likewise patentable over Scalzi at least for their dependence on an allowable base claim, as well as for additional features they recite. Furthermore, the cancellation of claims 29 and 34-35 render the rejection of these claims moot. Withdrawal of the rejection under 35 U.S.C. §102(a) over Scalzi is respectfully requested.

Claim Rejections under 35 U.S.C. §103

Claims 6, 9, 11-12, 18, 21, 23-24, 31, and 32 stand rejected variously under 35 U.S.C. §103(a) over Scalzi singularly or in view of one or more of U.S. Patent No. 5,828,884 to Lee and U.S. Patent No. 6,519,768 to Hughes et al. ("Hughes"). Based upon the amendments to the claims, as indicated above, these rejections are respectfully traversed.

As respectfully submitted above, independent claims 1, 13, and 25 are allowable over Scalzi. Similar to the argument presented regarding the anticipation rejection over Scalzi, neither

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Lee nor Hughes disclose, teach, or suggests a method, apparatus, or computer program product that uses a Directed-Acyclic-Graph or generates dependency analysis code, as recited by the Applicants.

Lee, for example, appears only to disclose a method for compiling and executing a software program that converts data between different endian formats. Hughes, on the other hand, discloses an instruction translation method that includes block optimization, but fails to suggest the method and apparatus recited by the Applicants.

Accordingly, since neither Scalzi, nor Lee, nor Hughes, singularly or in allowable combination discloses, teaches or suggests each and every feature recited in amended independent claims 1, 13, and 25, the rejection of claims 6, 9, 11-12, 18, 21, 23-24, 31, and 32 that depend variously therefrom is improper, being likewise patentable over the applied art at least based on their dependency on an allowable base claim, as well as for additional features they recite. Withdrawal of the 35 U.S.C. 103(a) rejection over Scalzi, Lee, and Hughes is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-28 and 30-33 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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